Supreme Court, U.S.
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No. 90-1576

In The

Supreme Court of the United States

October Term, 1990

CAMPING CONSTRUCTION COMPANY,

Cross-Petitioner,

v.

DISTRICT COUNCIL OF IRON WORKERS OF THE STATE OF CALIFORNIA AND VICINITY, AFL-CIO, an unincorporated association, and IRON WORKERS LOCAL UNION NO. 378, an unincorporated association,

Cross-Respondents.

On A Cross-Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

CROSS-PETITIONER'S SUPPLEMENTAL MEMORANDUM REQUESTING WAIVER OF RULE 13.5

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Camping Construction Company ("Camping"), the Cross-Petitioner before this Court in this case, and the Respondent before this Court in Case No. 90-1413, files this Supplemental Memorandum pursuant to Rule 15.7 of the Rules of this Court.

The purpose of this Supplemental Memorandum is to call the attention of the Court to intervening developments in this case and in Case No. 90-1413, and to request

that this Court waive certain provisions of Rule 13.5; to wit, the following sentence of that Rule:

> ". . . . However, a cross-petition which, except for Rule 12.3, would be untimely, will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted."

INTERVENING DEVELOPMENTS

This case, numbered in this Court as 90-1576, and the case numbered in this Court as 90-1413, arose from the same matter below: the latter as a Petition For Writ of Certiorari, and the former as a Cross-Petition For Writ of Certiorari. The Cross-Petition was filed pursuant to the provisions of Rule 12.3 following counsel's receipt of the Petition.

Counsel for Cross-Petitioner was aware of and relied upon this Court's Rule 15.5 which provides that distribution of the Petition and opposition thereto will be delayed until the Cross-Petition and its opposition is filed. In this case, however, this procedure did not take place.

According to this Court's Chief Deputy Clerk, Francis Lorson, the Petition filed in Case No. 90-1413 and its opposition were distributed to the Court for consideration prior to the distribution of the Cross-petition and its opposition. This Court has now already considered the Petition in 90-1413, and on April 29, 1991, has denied certiorari thereon without having before it the Cross-Petition and any opposition thereto.

As counsel for Camping, therefore, understands Rule 13.5, this Court can not grant the Cross-Petition filed in 90-1576 because of the denial of the Petition in 90-1413. A denial of certiorari on the Cross-Petition in these circumstances appears inappropriate, since this Court may not have been aware of the issues and arguments presented in the Cross-Petition at the time it took action on the Petition.

Chief Deputy Clerk Francis Lorson has advised counsel for Camping that the procedural problem involved here occurred when the opposition to the Petition in 90-1413 arrived in the Clerk's office on April 10, 1991, and along with the Petition was distributed that day, even though the Cross-Petition herein was timely filed that same day, but was not "in the building" until the following day, April 11, 1991.

REASONS FOR WAIVER OF RULE 13.5

Camping respectfully suggests three reasons for the waiver of this Court's Rule 13.5: (1) the procedural problem was not due to dilatory actions of Cross-Petitioner; (2) the issues sought to be reviewed by the Cross-Petition are separate and distinct from the issues sought to be reviewed by the Petition; and (3) the issues sought to be reviewed by the Cross-Petition are highly important ones concerning the jurisdiction of the federal courts under the Norris-LaGuardia Act.

First, as noted earlier, the procedural obstacle which appears to require automatic denial of the Cross-Petition

was presented by the premature distribution of the Petition to the Justices, an understandable problem in view of the "filed by mailing" provisions of Rule 29.2 and the somewhat ambiguous required filing date under Rule 12.3 when a Cross-Petition is filed within 30 days of receipt by counsel, rather than within 30 days of the Petition's *filing* date. Here, the Cross-Petition was timely filed under such rules, but was simply not "in the building" when the Clerk's office distributed the Petition in 90-1413 to the Court.

Second, the issues in the Petition are not intertwined with the issues presented by the Cross-Petition. The issues as to the former deal with NLRA Section 8(f) prehire contract repudiation rules, and the possible retroactive application thereof. The issues on the Cross-Petition deal with the jurisdiction of the federal courts, the proper application of the arbitrability precedents of this Court, and the question of the application of the anti-injunction provisions of the Norris-LaGuardia Act.

Finally, as set forth in the Cross-Petition, these issues are important ones in the administration of the federal policy of labor-management relations. The issues sought to be reviewed on the Cross-Petition apparently are ones this Court has not heretofore decided, and ones which need the attention of this Court at the present time. The issues as framed by Cross-Petitioner in its Questions Presented affect the labor-management community, as well as the proper role of arbitrators and federal courts.

CONCLUSION

For all the foregoing reasons, it is respectfully suggested that this Court should consider the Cross-Petition on its merits, and that this Court should waive the applicability of the aforementioned provisions of Rule 13.5.

May, 1991

Respectfully submitted,

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